

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.166 of 1996

Arising Out of PS. Case No.-46 Year-1993 Thana- SAHARSA SADAR District- Saharsa

LAXMAN MAHTON Son of Nand Lal Mahto Village- Bahilwara Pandey
Tola, Ps- Saraiya Dist- Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 168 of 1996

Arising Out of PS. Case No.-46 Year-1993 Thana- SAHARSA SADAR District- Saharsa

RATNESHWAR JHA son of Shree Dhaneshwar Jha Village- Bargaon Ps-
Besnahi Dist- Saharsa, P/A- Depott. Superintendent, Food Corporation of
India, Madhepura

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 172 of 1996

Arising Out of PS. Case No.-46 Year-1993 Thana- SAHARSA SADAR District- Saharsa

1. Gore Lal Thakur son of Rameshwar Thakur Village- Lakhan Chand Marhu
Tola Ps- Mokama Ghat Dist- Patna

2. Dewan Prasad son of Dashrath Sah Village- Khijri Khuti Tola Simdega Ps-
Simdega Dist- Gumla

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 166 of 1996)

For the Appellant/s : Mr. Rajesh Kumar, Advocate

For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 168 of 1996)

For the Appellant/s : Mr. Ansul, Advocate

Mrs. Sagrika, Advocate

For the State : Mr. Sujit Kumar Singh, APP



(In CRIMINAL APPEAL (DB) No. 172 of 1996)

For the Appellant/s : Mr. Ranjan Kr. Singh, Advocate
For the State : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 01-07-2024

Criminal Appeal (DB) No. 172 of 1996

When the matter was called out, learned A.P.P. has pointed out that both the appellants of the present appeal have expired and the report of the same has been received from the concerned Police Authority. It is also submitted that the written objection has been filed by the State in which there is a reference with regard to the death of both the present appellants.

2. In view of the aforesaid, the appeal stands abated.

Criminal Appeal (DB) No. 166 of 1996 & 168 of 1996

Both these appeals have been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Code') challenging the judgment of conviction and order of sentence dated 18.04.1996 passed by learned Ist Additional Sessions Judge, Saharsa in Sessions Case No. 45/94, arising out of Saharsa P.S. Case No. 46/93, whereby the present appellants have been convicted for the offences punishable under Sections 201 and 120B of the I.P.C. and sentenced to undergo rigorous



imprisonment for three years for the offences under Sections 201 and 120B of the I.P.C. and to pay a fine of Rs. 1,000/- each and, in default of payment of fine, the appellants have been sentenced to undergo further rigorous imprisonment for two months.

2. The prosecution case, in a nutshell, is as under:-

2.1. The informant, recorded his own statement that, on 02.02.1993 at 10:10 am, Ram Surat Prasad, Assistant Manager at F.C.I., Saharsa, gave him written information that Moolchand, District Manager at F.C.I. Saharsa, has committed suicide and after receiving this information, the informant along with S.I. went to the office of the District Manager, F.C.I. Saharsa, and recorded there at 10.30 am that at *verandah* (portico), he saw the burnt dead body of Moolchand, District Manager, F.C.I. Saharsa, and he further prepared the inquest report of his dead body and found that the dead body was 100% burnt. He also found out the injury on the right side of his hand and blood was oozing out from it and his tongue came out of the mouth and, during the course of the investigation, he found out that the lavatory of the office was broken or disturbed and its base was also found broken and he also found somewhat burnt sweater and one matchbox. He further found one brief case of the District Manager beneath the staircase, he found one plastic canister of 5 litres. He further enquired from



Ram Surat Prasad, Assistant Manager, F.C.I. Saharsa, who told him that, in the morning at 06:00 am, the District Manager, F.C.I., came from his house and met Ram Surat Prasad on the way telling him that he would go to Madhepura. He further asked from the night guard Laxman Mahton, who told him that at 06:30 am, the deceased manager came to his office and asked him to bring driver his car immediately as he had to go to Madhepura. The driver went to bring the car. He further enquired from another watchman who told him that the District Manager had asked him to bring one cup of tea immediately because he has to go to Madhepura and then he went to take tea and, on the basis of the aforesaid facts, the informant found that after making conspiracy, District Manager has been killed by a sharp cutting instrument and also by strangulation and thereafter he has been burnt.

2.2. After registration of the F.I.R., the Investigating Officer started the investigation and during the course of the investigation, he recorded the statement of the witnesses and thereafter filed charge-sheet against the appellants/accused before the concerned Magistrate Court. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Sessions Court, where the same was registered as Sessions Case No. 45/94.



3. In Criminal Appeal No. 166 of 1996, we have heard Mr. Rajesh Kumar for the appellant and Mr. Sujit Kr. Singh, learned A.P.P. for the Respondent-State.

3.1. In Criminal Appeal No. 168 of 1996, we have heard Mr. Ansul assisted by Mrs. Sagrika for the appellant and Mr. Sujit Kr. Singh, learned A.P.P. for the Respondent-State.

4. Learned counsels appearing for the appellants would mainly contend that one Ram Surat Prasad informed the Police about the incident, which took place at F.C.I., Saharsa. The said Assistant Manager of F.C.I., Saharsa, informed the Police that one Moolchand, District Manager, has committed suicide in the office and, therefore, on the basis of the said written information, the Police reached at the place and thereafter the said police officer found injury on the body of the deceased and blood was oozing out from the body. He has also noticed that the dead body was burnt. Thus, the said officer himself has registered the F.I.R. and thereafter carried out the investigation, wherein the present appellants have been implicated. It is contended that the said written information given by Ram Surat Prasad was not produced by the prosecution nor the said person was examined as a witness for the reasons best known to the prosecution.



4.1. It is further submitted that PW-1, PW-2, PW-4 and PW-13 have not supported the case of the prosecution and they have been declared hostile.

5. Learned counsels further submit that the present is a case of circumstantial evidence and there is no eye-witness to the incident in question. It is contended that the prosecution has failed to complete the chain of circumstances from which it can be said that the appellants herein have killed the deceased Moolchand.

6. It is also submitted that the investigating officer (PW-11) has specifically deposed that he had recorded the statement of witness Ramfal Yadav, who stated before him that, on 01.02.1993, a man came on red motorcycle wearing coat pant and he was drunk. Further, the investigating officer has also stated that Anil Prasad Shaw told him that a man used to come to Shambhu's shop from Dr. Sushil's clinic to drink tea. He was a healthy, short man with dark complexion. On 02.02.1993, he came on Shambhu's shop to take tea. Thus, from the aforesaid statement of the concerned witness, recorded by the investigating officer, it can be said that one person came on red motorcycle wearing coat and pant. However, the investigating officer has failed to enquire about the said person who came on motorcycle.



7. Learned counsels further submit that the Trial Court has, surprisingly, exhibited the case diary and while passing the impugned judgment and order referred the letter as well as the other material from the case diary and, on the basis of the presumption, that the threat was given by one of the appellants herein, he has killed the deceased Moolchand. Learned counsels further submits that the Trial Court has passed the impugned order on the basis of assumptions and presumptions and, at various places, the Trial Court has observed that the watchman Laxman, Dewan Prasad and Gorelal were found present in the office and they might have or have not taken part in the crime but the circumstances go or connect with this case that Ratneshwar Jha got the District Manager killed. Further, the Trial Court has presumed that the accused Ratneshwar Jha, the prime accused, must have hatched the plan to kill the District Manager. It is also observed that three other accused persons were present at the time of occurrence. They might not have participated in the murder of District Manager, F.C.I., but whatever had happened, it was in their knowledge and took place in their presence and, therefore, surprisingly, on this ground, the Trial Court has convicted them for the offences punishable under Section 201 read with Section 120B of I.P.C. Learned counsels, therefore, urged that the Trial Court has



committed serious error while passing the impugned judgment and order as the prosecution has failed to prove the case against the appellants beyond reasonable doubt. It is, therefore, urged that the present appeals be allowed.

8. On the other hand, learned A.P.P. has contended that though the present is a case of circumstantial evidence, the prosecution has proved the case against the appellants beyond reasonable doubt. It is submitted that, from the deposition given by Dr. Mithilesh Jha, it is revealed that the deceased died because of strangulation and thereafter he was burnt. Thus, though there is no eye-witness to the incident in question, the circumstances suggest presence of employees of F.C.I., Saharsa at the place. Further, the Trial Court has rightly referred the case diary, prepared by the investigating officer, in which there is a reference with regard to the letter given by Ratneshwar Jha, who had given threat to the deceased when the deceased found certain illegality at the *godown* of F.C.I. at Madhepura. Thus, the prosecution has proved the motive on the part of the accused Ratneshwar Jha to kill the deceased. Learned A.P.P., therefore, urged that no error is committed by the Trial Court while passing the judgment and order. He, therefore, urged that the present appeals be dismissed.



9. It would emerge that, PW-1, Ramfal Yadav, has not supported the case of the prosecution and has been declared hostile.

10. PW-2 Upendra Prasad has also not supported the case of the prosecution and he has been declared hostile.

11. PW-3 Vijaynath Jha has stated in his examination-in-chief that Moolchand assumed charge as District Manager of F.C.I. Saharsa. Before him, Ram Surat Prasad was the Assistant Manager at F.C.I. At that time, he was posted at the F.C.I. Storage Section. On 28.01.1993, District Manager, Ramfal and K. P. Singh had gone to Madhepura, but it is not known about the inspection of the warehouse. They did not suggest that the confirmation report should be sent only after the completion of consignment since K. P. Singh and others have not given the statement. On 28.01.1993, they did not get any information regarding weighing whether the weighing took place in Madhepura or not. When they came to the office, on 02.02.1993, they saw that he was lying dead. There was no complaint against him. He knew Ram Surat Prasad. He recognized all the accused persons in the dock.

11.1. In his cross-examination, he had stated that their office used to give instructions from time to time regarding storage, distribution etc. of food in warehouses in different



districts. They used to get information about consignments moving from different places. There is also a circular that if the goods are cleared for unloading in the warehouse and the depot manager does not get the goods unloaded, then damage cost is imposed. So the goods have to be unloaded even if the checking party does not arrive. The goods have to be unloaded within five hours, otherwise the penalty will start being imposed. The Depot Manager is responsible for penalty. It is further stated that District Manager had no complaints against any of the accused. Moolchand's family did not live there at all. He used to cook food on the stove. Moolchand was promoted from the fourth grade employee. Moolchand used to bring kerosene himself.

12. PW-4 Anil Prasad Shaw has not supported the case of the prosecution and he has been declared hostile.

13. PW-5 Dayanath Mishra has stated in his examination-in-chief that he used to work at F.C.I., Saharsa, at the time of incident. He took charge on 11.01.1993. At the time of incident, the deceased Moolchand was in F.C.I., Saharsa. On the day of incident when he came to office, he saw the deceased Moolchand surrounded by people.

13.1. In his cross-examination, he has stated that the deceased did not have any enmity with any of the staff.



14. PW-6 Jagannath Rai has stated in his examination-in-chief that he was posted as a watchman at F.C.I., Saharsa. When he reached office, he saw the dead body of Moolchand lying in the office.

15. PW-7 Vishwambhar Jha has stated, in his examination-in-chief, that he knew Moolchand, Manager at F.C.I., Saharsa. He used to live in a room near his house. He used to live alone and cook his food by himself. When he returned from his village, he came to know from his neighbours that he (Moolchand) has been killed.

15.1. In his cross-examination, he has stated that he does not know as to how the said occurrence has happened.

16. PW-8 Anil Kumar Gupta has stated that he does not know anything about the case.

17. PW-9 Taranand Jha has stated in his examination-in-chief that he was posted at Madhepura Railway *Godown* on 01.02.1993. The goods of F.C.I. were unloaded there prior to 01.02.1993. On 01.02.1993, the goods were weighed in his presence and three officers of F.C.I., Saharsa were there, whose names he does not know.

18. PW-10 Dr. Mithilesh Jha was posted at Sadar Hospital, Saharsa. He did the autopsy of the dead body of



Moolchand. The dead body was identified by constable Jairam Singh and Dafadar Md. Ismail and the following injuries were found:-

“Rigor mortis present. 90% body was burnt and the burns were of post mortem, lacerated wound on the right temporal region of head.

1. Whole body effected with burn injuries except both feet which were covered with socks and leather shoes and a portion of back. The burn injury appears to be post mortem in nature as no blister was found on the body no reaction time of redness seen.

2. A lacerated wound of 2”x1/4”x1/4” seen in the right temporal region of skull. This injury is antemortem and the wound was full of blood.

3. Tongue was protruding of the body and blood was seen coming out of the mouth.

4. Skin of neck was charred.

5. Inter findings have been mentioned in relevant columns as follows:- (A) Pluera congested, (B) Ball of trachea congested and blood stained, (C) Lungs congested, (D) Right side of heart filled with blood and left empty, (E) Brain congested.

In my opinion the cause of death is strangulation. The body was burnt after the death. Time elapsed since death is more than 12 hours and less than 36 hours. This is my P.M. report prepared by me and signed by me, marked as Ext.1.”

19. PW-11 Nageshwar Prasad Singh is the Investigating officer, who was the station in-charge of Saharsa police station on 02.02.1993. On the same day, he received a report at 10.10 hours and, on the basis of that, he prepared a *sanha* 61/93 on that day



and proceeded for the place of occurrence. He reached the office of the District Manager, F.C.I., and made inspection of the place of occurrence in presence of informer Ram Surat Prasad, Assistant Manager and Devan Prasad Peon. It is stated that he found smell of Kerosene oil from the bed and there were signs of burn marks in the middle of the room. It is also stated that he found a matchbox from the lavatory. It is further stated that he recorded the statements of Nandlal Singh, Ramsurat Prasad, Laxman Mahto, Deven Prasad, Gore Lal Thakur, Aniruddh Singh, S.K. Chakravarty, V.N. Jha, Kailash Prasad Singh, Md. Qudus and Devnandan Chaudhary. He took the statement of the witnesses Ramfal Yadav, Upendra Yadav, Anil Prasad Sah, Shambhu Shaw, Rajkumar Shaw. It is also stated by him that he searched the house of Nand Lal Singh, Laxman Mahato, Devan Prasad, Anirudh Singh, Gore Lal Thakur. He did not find a kerosene pot in Aniruddha's house who was the watchman. He asked SK Chakraborty, Assistant Manager F.C.I., Saharsa the list of workers under him. He inspected the warehouse of F.C.I. Madhepura. He took the statement of the witnesses Ramfal Yadav who stated before him that, on 01.02.1993, a man came on red motorcycle wearing coat pant and he was drunk. He has further stated that Anil Prasad Shaw told him that a man used to come to Shambhu's shop from



Dr. Sushil's clinic to take tea. He was a healthy, short man with dark complexion. On 02.02.1993, he came on Shambhu's shop to drink tea. He took the statement of Laxman Prasad, Gorelal Thakur etc. and prepared the inquest report and then he mentioned this incident in his statement. He has further stated that all the aforementioned person's house were searched but nothing objectionable was found. He went with the Director of Finger Print, Patna at the incident site and helped him in his work. During the course of investigation, he took the statement of F.C.I. car driver Shivnarayan Das, R.P.F. K. Naik, Biso Singh, Naik Satyanarayan Shaw and Shyamlal Sharma AG-2. He took the statement of all F.C.I. employees. He has further stated that when he reached Saharsa office for investigation, he investigated the house of Nandlal Singh, Lakshman Mahto, Devan Prasad, Anurudh Singh and others but found nothing objectionable. He has also stated that F.C.I. car was hired. Further, he has stated that he found briefcase and an oil gallon from the place of occurrence. A fountain pen, a comb, Ajanta country *khar*, and a bunch of seven keys was found. The briefcase and its contents were marked as Ext.-I and the oil gallon was marked as Ext.-II. The oil gallon was of green colour and it was of postman.



20. PW-12 Satyendra Singh has stated that he was the station-in-charge of Saharsa Police Station. On that day, he handed over the responsibility of investigation to N.K.Singh. He perused the diary and filed the charge-sheet as per the order and initiated the case.

21. PW-13 Kailash Prasad Singh has not supported the case of the prosecution and has been declared hostile.

22. PW-14 Rameshwar Mahto has stated that he recognizes the handwriting and signature of Inspector P.Singh from Para 1 to 257N. It has been marked as Exhibit-10. He has further stated that he had been there for eight years and this report was not written in front of him.

23. PW-15 Nagendranath Mishra has stated that this photocopy was sent in the name of District Manager, F.C.I., Saharsa on 01.02.1993 which was received from S.P. Office, Saharsa. It is marked X for identification.

24. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused the Trial Court record as well as the paper-book. We have gone through the entire evidence led by the prosecution before the Trial Court and re-appreciated the same. As per the F.I.R., recorded by the police officer himself, one Ram Surat Prasad,



Assistant Manager at F.C.I., Saharsa gave him written information wherein it has been stated that Moolchand, District Manager at F.C.I., Saharsa has committed suicide. It would further reveal that, after receiving the said information, the informant along with the other police officers went to the office of the District Manager, F.C.I. Saharsa and, at that place, he found the burnt dead body of Moolchand. The Inquest Report of the dead body was prepared. At that time, he found injuries on the body of the deceased. He also found that the lavatory of the office was broken. Matchbox, plastic jar etc. were found and, therefore, the said police officer himself has registered the F.I.R. and thereafter the said officer himself has carried out the investigation of the case. It further transpires from the evidence that PW-1, PW-2, PW-4 & PW-13 have not supported the case of the prosecution and they have been declared hostile. Even PW-8 has stated that he does not know anything about the case. Most of the witnesses are formal witnesses who have not thrown any light with regard to the incident in question. It is true that, from the deposition given by PW-10 Dr. Mithilesh Jha, it would reveal that the cause of death was strangulation and the body was burnt after the death. Thus, it cannot be disputed that the deceased died because of homicidal death. However, the question, in the present case, is who has killed him.



25. It is an admitted position that the present is a case of circumstantial evidence and there is no eye-witness to the incident in question. It would emerge that, prosecution has failed to examine Ram Surat Prasad, the officer who informed the police in writing about the death of District Manager, Moolchand. Further, the said written complaint is also not produced before the Court. From the evidence led by the prosecution, it is revealed that the investigating officer (PW-11) Nageshwar Prasad Singh has deposed that the witness Ramfal Yadav stated before him that, on 01.02.1993, a man came on red motorcycle wearing coat pant and he was drunk. However, it is pertinent to note that the prosecution has examined Ramfal Yadav as PW-1 and he has not supported the case of the prosecution and, therefore, he was declared hostile. Further, it is not coming out from the evidence of the prosecution that the investigating officer has tried to search the said person who came on the red motorcycle at the place of incident. It is surprising that the informant police officer in the F.I.R. itself has referred the name of Laxman Mahto (night-guard) who told him that, at 06:30 am, the District Manager came to his office and asked him to bring driver and car immediately as he has to go to Madhepura and, therefore, the driver went to bring the car. In the F.I.R. itself, it has been further stated that another watchman told



him that the District Manager had asked him to bring one cup of tea immediately because he has to go to Madhepura and, therefore, he went to take tea. However, it is revealed from the record that, surprisingly, one night-guard and another watchman and driver were implicated as accused in the incident in question and the Trial Court has, surprisingly, convicted them for the offences punishable under Section 201 read with 120B of I.P.C., on the basis of assumptions and presumption. The Trial Court has, surprisingly, observed that all these accused were present at the place of occurrence and when the another accused killed the deceased, they allowed the criminals to disappear the evidence of offence and they did not try to save their officer and, only on this ground, they have been convicted for the aforesaid offences. It is pertinent to note that these accused persons have been acquitted *qua* offence punishable under Section 302 of I.P.C.

26. So far as the accused Ratneshwar Jha is concerned, the Trial Court has, surprisingly, exhibited the case diary at exhibit 10,11 & 12 and wrongly placed reliance upon the provisions contained in Section 172(2) of Code. The Trial Court has referred the letter written to the District Manager, F.C.I. Saharsa by one K.P. Singh. On the basis of the case diary, it has been observed and presumed by the Trial Court that, because of the report and



thereafter the threat given by the accused, he must have killed the deceased who was an honest officer.

27. Thus, from the aforesaid facts and circumstances of the present case, we are of the view that the Trial Court, on the basis of assumption and presumption, has convicted all the accused and the prosecution has failed to prove the chain of circumstances connecting the appellants/accused with the incident in question. Thus, we are of the view that, when the prosecution has failed to prove the case against the appellants/accused beyond reasonable doubt, the Trial Court ought to have acquitted them.

28. Accordingly, the impugned judgment of conviction and order of sentence dated 18.04.1996 passed by learned Ist Additional Sessions Judge, Saharsa in Sessions Case No. 45/94, arising out of Saharsa P.S. Case No. 46/93, is quashed and set aside. All the appellants are acquitted of the charges levelled against them by the learned Trial Court. As the appellants in Criminal Appeal (DB) Nos. 166 of 1996 & 168 of 1996 are on bail, they are discharged from the liabilities of their respective bail bonds, if any.

29. Criminal Appeal (DB) Nos. 166 of 1996 & 168 of 1996 are allowed.



30. As noted above, Criminal Appeal (DB) No. 172 of 1996 stands abated.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Sachin/-

AFR/NAFR	N.A.F.R.
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